

REMARKS

Upon entry of the present amendment, claims 24, 26 and 33-43 are pending in the instant application. Claims 1, 20, 21 and 23, having been withdrawn from consideration by the Examiner as being drawn to a non-elected invention, have been cancelled without prejudice or disclaimer. Applicants reserve the right to pursue the subject matter of these claims in related applications.

Accordingly, no new matter has been introduced.

I. Requirement for Election of Species

The Examiner has required an election under 35 U.S.C. § 121 of “a single disclosed species of antigenic epitope for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held allowable.” *See*, Paper No. 10, page 5.

The Examiner alleges that the application contains claims directed to antigenic epitopes of the polypeptide of SEQ ID NO:2 comprising amino acids 9-13, 28-31, 49-52, 105-111 and 133-142, and that “these epitopes are patentably distinct because they each would bind different and patentably distinct antibodies.” *See*, Paper No. 10, page 5.

Applicants respectfully traverse and request the withdrawal of the present requirement to elect a single species for prosecution. Applicants respectfully point out that the Examiner has not disclosed any statutory or regulatory basis for the requirement for election of species within the group of closely related sequences of SEQ ID NO:2. However, in order to be fully responsive, Applicants hereby further provisionally elect, *with traverse*, the antigenic epitope consisting of amino acid residues 105-111 of SEQ ID NO:2, as claimed in claim 42. Applicants understand the elected species to be read upon by pending claims 39-43. Applicants reserve the right to file one or more divisional

applications directed to non-elected inventions should the present requirement be made final.

Applicants note that the Examiner is requiring an election of a species member of a single Markush-type claim. Applicants contend that the antigenic epitopes which are subject to the present requirement, are not obvious variants of one another or of a common sequence motif. However, Applicants respectfully point out that MPEP § 803.02 requires that “[i]f the members of the Markush group are sufficiently few in number or so closely related that a search and examination of the entire claim can be made without serious burden, the examiner must examine all claims on the merits.” As described above, the members of the Markush group of the pending claim 42 are sufficiently few in number (five) and very closely related, as they are all fragments of the single amino acid sequence disclosed as SEQ ID NO:2, so that a search of all of the members may be made without a serious burden. Moreover, even assuming that examination of the entire claim would present a serious burden, MPEP § 803.02 states that “[f]ollowing election, the Markush-type claim will be examined fully as to the elected species and further to the extent necessary to determine patentability.” If no prior art is found “that anticipates or renders obvious the elected species, the search of the Markush-type claim will be extended.” *Id.* (emphasis added).

In view of the discussion above, Applicants respectfully request that the requirement under 35 U.S.C. § 121 for election of species within the disclosed antigenic fragments of SEQ ID NO:2 be withdrawn and the instant claims be examined in one application. Applicants respectfully request that the above-made amendments and remarks be entered and made of record in the file history of the instant application.

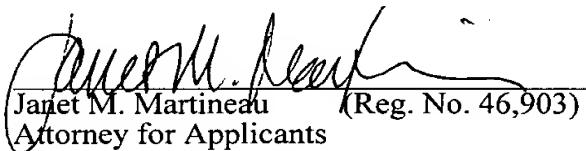
Conclusion

In view of the foregoing remarks, applicants believe that this application is now in condition for substantive examination. The Examiner is invited to call the undersigned at the phone number provided below if any further action by applicant would expedite the examination of this application.

Finally, if there are any fees due in connection with the filing of this paper, please charge the fees to our Deposit Account No. 08-3425. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

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Enclosures
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